

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ONLY AL-KHIDHR

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1223LG-RHW

**HARRISON COUNTY, MISSISSIPPI BY AND
THROUGH ITS BOARD OF SUPERVISORS;
HARRISON COUNTY SHERIFF GEORGE PAYNE;
WAYNE PAYNE; DIANE GATSON RILEY;
STEVE CAMPBELL; RICK GATSON; RYAN TEEL;
MORGAN THOMPSON, JOHN DOES 1-4,
AMERICAN CORRECTIONAL ASSOCIATION,
JAMES A. GONDLES, JR., UNKNOWN DEFENDANTS
1-3 EMPLOYEES OF AMERICAN CORRECTIONAL
ASSOCIATION; HEALTH ASSURANCE LLC;
UNKNOWN DEFENDANTS 1-2 EMPLOYEES OF
HEALTH ASSURANCE, LLC**

DEFENDANTS

MOTION TO COMPEL

COME NOW Defendants, Harrison County Sheriff's Department, George Payne, Jr., Dianne Gatson-Riley, Wayne Payne, and Steve Campbell, in their official and in individual capacities, by and through their attorneys, Dukes, Dukes, Keating & Faneca, P.A., and pursuant to the Federal Rules of Civil Procedure, file this Motion to Compel Plaintiff's Pre-Discovery Disclosures and execute the medical waivers and would show unto the Court the following, to-wit:

I.

On July 2, 2008, a Case Management Conference was held before the Court, and attended by counsel for the parties. Pursuant to the Federal Rules of Civil Procedure, the parties' Pre-Discovery Disclosures were due no later than June 25, 2008. See FRCP 26(a)(1). On August 9, 2008, Plaintiff sent Defendants a list of their pre-discovery

disclosures, however failed to supply Defendants with the documents as requested by the undersigned. Defendants' counsel has contacted Plaintiff's counsel by correspondence on numerous occasions requesting the documents and other materials listed in Plaintiff's Pre-Discovery Disclosures and requesting that Plaintiff execute the medical waivers as evidenced by the correspondence attached hereto as **Exhibit "A", "B" and "C"**. To date, the Plaintiff has failed to submit these documents.

II.

The undersigned certifies that a good faith effort has been made to resolve this pre-discovery dispute pursuant to uniform District Court Rule 37.1. See Good Faith Certificate and correspondence attached hereto as **Exhibit "C"**. As stated in the affidavit, attached hereto as **Exhibit "D"** on December 1, 2008, counsel for the Defendants sent a Good Faith Certificate to Plaintiff, but never received a response.

III.

To date, the Plaintiff has wholly and fully failed to provide these Defendants with his Pre-Discovery Disclosures, and an Order should be entered against Plaintiff compelling him to furnish responses thereto. Counsel for the Defendants hereby certifies that they have attempted a good faith resolution of this matter pursuant to Uniform Local Rule 37.1 for the Southern District of Mississippi.

IV.

In addition, due to Plaintiff's failure to timely and adequately provide their pre-discovery disclosures, which are likely the same documents used by Plaintiff's experts, and failure to execute the medical waivers, Defendants are now prejudiced by the fact

that they are not in a position to fully evaluate Plaintiff's case and determine whether additional experts should be designated and if so, give the expert these documents to utilize in forming their opinions. Therefore, Defendants reserve the right to file a motion for additional time to designate their experts in the event one should be needed.

WHEREFORE, PREMISES CONSIDERED, the moving Defendants file their Motion to Compel and respectfully request that this Court enter an Order compelling the Plaintiff to submit his Pre-Discovery Disclosures and an executed medical waiver to the Defendants.

RESPECTFULLY SUBMITTED, this the 1st day of December, 2008.

**George Payne, Jr., Wayne Payne, Dianne
Gatson-Riley, Steve Campbell, officially and
in their individual capacities, Defendants**

BY: DUKES, DUKES, KEATING & FANCA, P.A.

BY: s/Cy Faneca
CY FANCA, MSB #5128

Cy Faneca, MSB #5128
Haley N. Broom, MSB #101838
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CERTIFICATE OF SERVICE

I, CY FANCA, do hereby certify that I have this day delivered, via electronic filing and/or United States Mail, postage fully pre-paid, a true and correct copy of the above and foregoing pleading to the following:

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This, the 1st day of December, 2008.

s/Cy Faneca
CY FANCA